



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
3300 NEWPORT BOULEVARD, BLDG. C
NEWPORT BEACH, CA 92658-8915
(949) 644-3209**

Memorandum

To: Planning Commission
From: Jaime Murillo, Associate Planner
Date: October 30, 2011
Cc: Kimberly Brandt, Brenda Wisneski, Jim Campbell, Leonie Mulvihill,
Tony Brine
Re: 2008-2014 Draft Housing Element (PA20008-078)
Negative Declaration Comments and Responses

Attached is copy of all the comment letters received on the Initial Study/Negative Declaration that was prepared for the project. Although not required per the California Environmental Quality Act, staff has prepared clarifying responses to each of the comment letters received. Staff and the environmental consultant who prepared the environmental document do not believe the information provided in the comment letters identify any new environmental issues not addressed in the environmental document, and that the determination of a Negative Declaration remains appropriate.

RESPONSE TO PUBLIC COMMENTS

NEWPORT BEACH HOUSING ELEMENT UPDATE (2008 - 2014) NEGATIVE DECLARATION NEWPORT BEACH, CA

INTRODUCTION

The 30-day public review period for the Negative Declaration prepared for the Newport Beach Housing Element Update Project extended from October 1 through October 31, 2011. The City of Newport Beach received five (5) comment letters and one (1) email on the Negative Declaration during the formal public review and comment period. Responses to the comments included in each of the letters received by the City have been prepared and are included with the Final ND. The comment letters and email were received from:

1. Native American Heritage Commission (October 6, 2011)
2. Southern California Gas Company (October 10, 2011)
3. California Department of Toxic Substances Control (October 27, 2011)
4. Jim Mosher (October 30, 2010)
5. California Department of Transportation (October 31, 2011)
6. Orange County Airport Land Use Commission (October 31, 2011)

1. Native American Heritage Commission (October 6, 2011)

The letter received from the Native American Heritage Commission (NAHC) reflects the requirements and recommendations prescribed for (early) consultation with Native American tribes, including the list of Native American contacts, in order to address concerns related to cultural resources that may be affected by future development in the City of Newport Beach. However, as indicated in the project description and throughout the initial study prepared for the Newport Beach Housing Element Update, the proposed project does not include development and no direct impacts either to historic or cultural/archaeological resources will occur as a result of project implementation. Nonetheless, the Natural Resources Element of the City's General Plan includes several policies that require consultation with Native American representatives as well as other policies intended to ensure that potential impacts to historic and/or cultural/archaeological resources resulting from urban development are avoided or reduced consistent with the requirements and recommendations presented in the NAHC letter.

It is also important to note that since the Housing Element Update requires an amendment to the General Plan, the City is required to consult with California Native American Tribes identified by the NAHC for the purpose of protecting, and/or mitigating impacts to cultural places. The City has mailed and e-mailed invitations for consultation to each of the tribes on the consultation list provided by the NAHC. Five of the tribes on the list indicated to the City through e-mail and telephone conversations that they were not interested in consultation on this project. After multiple attempts to contact the remaining three tribes identified on the list, the City has not received any responses.

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net



October 6, 2011

Mr. Jaime Murillo, Associate Planner

City of Newport Beach

3300 Newport Boulevard; P.O. Box 1768
Newport Beach, CA 92658

RECEIVED BY
COMMUNITY
OCT 11 2011
DEVELOPMENT
CITY OF NEWPORT BEACH

Re: SCH#2011091088; CEQA Notice of Completion; proposed Negative Declaration for the "Newport Beach Housing Element Update (2008-2014)" located in the City of Newport Beach; Orange County, California

Dear Mr. Murillo:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. This project is subject to California Government Code §65352.3 (SB 18). The NAHC wishes to comment on the proposed project.

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were not identified** within the project area identified. However, the absence of archaeological resources does not preclude their existence.

The NAHC 'Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built

around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

Native American Contacts

Orange County
October 6, 2011

Ti'At Society/Inter-Tribal Council of Pimu
Cindi M. Alvitre, Chairwoman-Manisar
3098 Mace Avenue, Aapt. D Gabrielino
Costa Mesa, , CA 92626
calvitre@yahoo.com
(714) 504-2468 Cell

Gabrielino Tongva Nation
Sam Dunlap, Chairperson
P.O. Box 86908
Los Angeles , CA 90086
samdunlap@earthlink.net
Gabrielino Tongva

(909) 262-9351 - cell

Juaneno Band of Mission Indians Acjachemen Nation
David Belardes, Chairperson
32161 Avenida Los Amigos Juaneno
San Juan Capistrano CA 92675
chiefdavidbelardes@yahoo.
(949) 493-4933 - home
(949) 293-8522

Juaneno Band of Mission Indians Acjachemen Nation
Anthony Rivera, Chairman
31411-A La Matanza Street Juaneno
San Juan Capistrano CA 92675-2674
arivera@juaneno.com
(949) 488-3484
(949) 488-3294 - FAX
(530) 354-5876 - cell

Tongva Ancestral Territorial Tribal Nation
John Tommy Rosas, Tribal Admin.
Private Address Gabrielino Tongva

tattnlaw@gmail.com
310-570-6567

Gabrielino Tongva Indians of California Tribal Council
Robert F. Dorame, Tribal Chair/Cultural Resources
P.O. Box 490
Bellflower , CA 90707
gtongva@verizon.net
562-761-6417 - voice
562-761-6417- fax
Gabrielino Tongva

Gabrielino/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693
San Gabriel , CA 91778
GTTribalcouncil@aol.com
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 -FAX
Gabrielino Tongva

Juaneno Band of Mission Indians
Alfred Cruz, Culural Resources Coordinator
P.O. Box 25628
Santa Ana , CA 92799
alfredgcruz@sbcglobal.net
714-998-0721
714-998-0721 - FAX
714-321-1944 - cell
Juaneno

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed
SCH#2011091088; CEQA Notice of Completion; proposed Negative Declaration for the Newport Beach Housing Element Update (2008-2014)
Project; located in the City of Newport Beach; Orange County, California.

Native American Contacts
Orange County
October 6, 2011

Gabrielino-Tongva Tribe
Bernie Acuna
1875 Century Pk East #1500 Gabrielino
Los Angeles , CA 90067
(619) 294-6660-work
(310) 428-5690 - cell
(310) 587-0170 - FAX
bacuna1@gabrieinotribe.org

Juaneno Band of Mission Indians Acjachemen Nation
Joyce Perry; Representing Tribal Chairperson
4955 Paseo Segovia Juaneno
Irvine , CA 92612
949-293-8522

Gabrielino-Tongva Tribe
Linda Candelaria, Chairwoman
1875 Century Park East, Suite 1500
Los Angeles , CA 90067 Gabrielino
lcandelaria1@gabrielinoTribe.org
626-676-1184- cell
(310) 587-0170 - FAX
760-904-6533-home

Gabrieleno Band of Mission Indians
Andrew Salas, Chairperson
P.O. Box 393 Gabirelino Tongva
Covina , CA 91723
(626) 926-4131
gabrielenoindians@yahoo.
com

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011091088; CEQA Notice of Completion; proposed Negative Declaration for the Newport Beach Housing Element Update (2008-2014) Project; located in the City of Newport Beach; Orange County, California.

2. Southern California Gas Company (October 10, 2011)

This letter is the notification from Southern California Gas is responsible for providing natural gas service in the City of Newport Beach. The letter does not contain any comments related to the adequacy of the environmental analysis presented in the initial study.



1919 S. State College Blvd.
Anaheim, CA 92806-6114



October 10, 2011

City of Newport Beach
Planning Department
3300 Newport Blvd
P.O. Box 1768
Newport Beach, CA 92658

Attention: Jaime Murillo

Subject: Proposed Negative Declaration – Newport Beach Housing Element(2008-2014).

This letter is not to be interpreted as a contractual commitment to serve the proposed project but only as an information service. Its intent is to notify you that the Southern California Gas Company has facilities in the area where the above named project is proposed. Gas facilities within the service area of the project could be altered or abandoned as necessary without any significant impact on the environment.

Information regarding construction particulars and any costs associated with initiating service may be obtained by contacting the Planning Associate for your area, Dave Baldwin, at (714) 634- 3267.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Harriel".

Mike Harriel
Technical Supervisor
Orange Coast Region- Anaheim

3. California Department of Toxic Substances Control (October 27, 2010)

The Department of Toxic Substances Control (DTSC) letter enumerates several comments related to potential hazards (e.g., contaminated soils, human health of sensitive receptors, etc.) and their potential effects on urban development. As indicated throughout the initial study, the proposed project includes only the City's Housing Element Update, which would not result directly in potential impacts. The City of Newport Beach's Housing Element details the City's strategy for enhancing and preserving the community's character, identifies strategies for expanding housing opportunities and services for all household types and income groups, and provides the primary policy guidance for local decision-making related to housing. As specified in the General Plan Update EIR, all new residential development anticipated to occur pursuant to the adopted long-range plans for the City, including residential development associated with the Housing Element Update would be subject to the adopted relevant policies developed to protect existing and future residents from potential hazardous conditions. The comments raised in the DTSC letter would be the basis of any future environmental analysis for a residential project proposed in the City.



Department of Toxic Substances Control



Matthew Rodriguez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
5796 Corporate Avenue
Cypress, California 90630

Edmund G. Brown Jr.
Governor

October 27, 2011

Mr. Jaime Murillo
City of Newport Beach Planning Department
3300 Newport Beach
Newport Beach, California 92663



DRAFT MITIGATED NEGATIVE DECLARATION (ND) FOR CITY OF NEWPORT BEACH HOUSING ELEMENT UPDATE (SCH# 2011091088)

Dear Mr. Murillo:

The Department of Toxic Substances Control (DTSC) has received your submitted document for the above-mentioned project. As stated in your document: "The proposed Newport Updated Housing Element is a comprehensive statement of the city's housing policies and serves as a specific guide for implementation of these policies. The Housing Element Update examines current housing needs, estimates future housing needs, and establishes goals, policies, and programs pertaining to those needs. Housing programs are responsive to current and future needs. They are also established within the context of available community, state, and federal economic and social resources, and realistic quantified housing objectives".

Based on the review of the submitted document DTSC has the following comments:

- 1) The document states that the ND would identify any known or potentially contaminated sites within the proposed project area.
- 2) The ND should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If hazardous materials or wastes were stored at the site, an environmental assessment should be conducted to determine if a release has occurred. If so, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. It may be necessary to determine if an expedited response action is required to reduce existing or potential threats to public health or the environment. If no immediate threat exists, the final remedy should be implemented in compliance with state laws, regulations and policies.

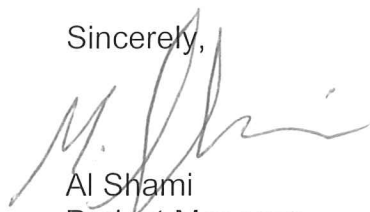
- 3) The project construction may require soil excavation and soil filling in certain areas. Appropriate sampling is required prior to disposal of the excavated soil. If the soil is contaminated, properly dispose of it rather than placing it in another location. Land Disposal Restrictions (LDRs) may be applicable to these soils. Also, if the project proposes to import soil to backfill the areas excavated, proper sampling should be conducted to make sure that the imported soil is free of contamination.
- 4) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. A study of the site overseen by the appropriate government agency might have to be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.
- 5) If during construction/demolition of the project, soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented. If it is determined that contaminated soil and/or groundwater exist, the ND should identify how any required investigation and/or remediation will be conducted, and the appropriate government agency to provide regulatory oversight.
- 6) If weed abatement occurred, onsite soils may contain herbicide residue. If so, proper investigation and remedial actions, if necessary, should be conducted at the site prior to construction of the project.
- 7) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.
- 8) If buildings, other structures, or associated uses; asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities.

Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

- 9) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

If you have any questions regarding this letter, please contact me at ashami@dtsc.ca.gov, or by phone at (714) 484-5472.

Sincerely,



Al Shami
Project Manager
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
P.O. Box 806
Sacramento, California 95812
nritter@dtsc.ca.gov

CEQA # 3372

4. Jim Mosher (October 30, 2010)

Response to Comment No. 1

The document that was circulated for public review is the initial study, which was prepared to evaluate the potential impacts of the proposed Newport Beach Housing Element Update. The initial study environmental checklist is included in Section 4.0 of the document that was distributed for public review. Because the analysis concluded that no significant impacts would occur as a result of that project, a Negative Declaration is proposed and the "Notice of Intent to Adopt a Negative Declaration" accompanied the initial study.

Response to Comment No. 2

As indicated in Response to Comment No. 1, Negative Declaration is the determination made by the City based on the environmental analysis conducted for the project. That determination is found in Section 6.0 of the initial study (refer to page 91 of the initial study). As a result, the "Notice of Intent to Adopt a Negative Declaration" was included with the initial study as a separate notice.

Response to Comment No. 3

Draft No. 4 (August 2011) of the Newport Beach Housing Element Update is the most current version that was approved by the State Housing and Community Development Department and is the subject of the initial study. Draft No. 4 is listed first on the City's website and the webpage where the document is available for review is referenced on page 13 of the initial study.

Response to Comment No. 4

As indicated on page 15 of the initial study, the City of Newport Beach is the project proponent.

Response to Comment No. 5

Technically, the 30-day public comment period is October 30; however, because that day falls on a Sunday, the City accepted comments until 5:00 p.m. on Monday, October 31. The public review period was updated to reflect this; however, City staff inadvertently failed to update the third paragraph from the end. Nonetheless, as indicated above, the City accepted comments received through the end of the business day on October 31.

From: [Jim Mosher](#)
To: [Murillo, Jaime;](#)
Subject: Comments on proposed Negative Declaration for the Newport Beach Housing Element Update (2008-2014)
Date: Sunday, October 30, 2011 2:41:20 PM

To: Jaime Murillo, Associate Planner
City of Newport Beach

Re: proposed Negative Declaration for the Newport Beach Housing Element Update (2008-2014)

The following comments are being submitted in response to the notice at:

<http://www.newportbeachca.gov/index.aspx?page=99&recordid=1531>

The document under review describes itself as an "INITIAL STUDY/NEGATIVE DECLARATION" but the CEQA Guidelines:

<http://www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf>

describe the "Initial Study" (Guidelines Article 5, beginning at 15060) and the "Negative Declaration" (Article 6, beginning at 15070) as separate processes, and my understanding is that the "Initial Study" would normally consist of something similar to the checklists provided in Appendices G or H of the CEQA Guidelines.

In particular, CEQA Guideline 15071 states that:

"A Negative Declaration circulated for public review shall include:

...

- (c) A proposed finding that the project will not have a significant effect on the environment;
- (d) An attached copy of the Initial Study documenting reasons to support the finding."

Question 1: Is the document being circulated for public review the Initial Study or the Negative Declaration?

Question 2: If it is the "Negative Declaration," where is the "attached copy of the Initial Study"?

The "project" to which the Negative Declaration applies appears to be the "City of Newport Beach Housing Element Update (2008-2014)" cited on the title page, which a close reading of the text suggests is a proposed amendment to the 2006 General Plan. I can find only vague references to early drafts of the text of "Housing Element Update (2008-2014)" having been posted at unspecified locations on the City website, and public workshops having been held in 2008. It also appears subsequent revisions were made to address concerns raised by the State Department of Housing, which may or may not have been publicly reviewed:

<http://www.newportbeachca.gov/index.aspx?page=192>

It seems impossible to comment on the adequacy of the Negative Declaration without being sure exactly what "project" it refers to (probably "HCD Draft No. 4 (August 2011)" at the above link?).

Question 3: Should the Negative Declaration include a link to, or a clearer identification of, a definitive copy of the specific version of the "Housing Element Update (2008-2014)" that it declares to have no significant impact?

CEQA Guideline 15071(b) requires a Negative Declaration to identify "the name of the project proponent."

Question 4: Who is the project proponent?

The "Notice of Intent to Adopt a Negative Declaration" dated September 28, 2011:

http://www.newportbeachca.gov/pln/CEQA_REVIEW/Newport%20Beach%20Housing_Element_Update_2008-2014_ND/01_Notice_of_Intent_to_Adopt.pdf

says the public review period is "September 30, 2011 to October 31, 2011" but the third paragraph from the end says "comments must be received no later than October 30, 2011 at 5:00 pm."

Question 5: Is "October 30, 2011 at 5:00 pm" in the printed notice a misprint for "October 31, 2011 at 5:00 pm"?

Finally, the on-line notice at:

<http://www.newportbeachca.gov/index.aspx?page=99&recordid=1531>

gives your contact phone number as (949) 644-33209. I believe this is a misprint for 949-644-3209.

Sincerely yours,

Jim Mosher
2210 Private Road
Newport Beach, CA 92660
(949) 548-6229

5. California Department of Transportation (October 31, 2011)

The comments raised by Caltrans relate to two areas: (1) the need for policies in the Housing Element to stress agency coordination early in the land use planning process and (2) the need to conduct traffic analyses on (residential) projects, the method of analysis, levels of service targets, traffic impact and fair share fees, etc. The City's General Plan Circulation Element contains several policies related to circulation in the City, including agency coordination in land use planning (CE 3.1.2) as well as other policies intended to facilitate and accommodate traffic through the City of Newport Beach. In addition, the City will require traffic impact analyses (TIAs) to be conducted on projects that generate traffic in excess of established thresholds. The TIAs will be prepared in accordance with City requirements and, when applicable, with those standards and methods prescribed by Caltrans. The City will continue to coordinate such studies to ensure that future projects that have a potential to affect Caltrans' facilities are adequately addressed.

DEPARTMENT OF TRANSPORTATION

District 12
3347 Michelson Drive, Suite 100
Irvine, CA 92612-8894
Tel: (949) 724-2267
Fax: (949) 724-2592

RECEIVED BY
COMMUNITY

OCT 31 2011

DEVELOPMENT
CITY OF NEWPORT BEACH



*Flex your power!
Be energy efficient!*

FAX & MAIL

October 31, 2011

Jaimc Murillo
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658

File: IGR/CEQA
SCH#: 2011091088
Log #: 2805
SR-1, 55, 73

Subject: City of Newport Beach Housing Element Update 2008-2014

Dear Mr. Hunter,

Thank you for the opportunity to review and comment on the **Negative Declaration for the City of Newport Beach Housing Element Update 2008-2014**. The Housing Element is an integral component of the City's General Plan, which addresses existing and future housing needs of all types for persons of all economic segments in the City. State law requires the preparation of a Housing Element every five years as part of the comprehensive General plan. The nearest State Routes to the project site are SR-1, 55, and 73.

The California Department of Transportation (Department), District 12 is a commenting agency on this project and has the following comment:

1. The Housing Element should include language requiring the City to develop policies stressing coordination between the City and the Department early in the land use and transportation planning process.
2. Although this particular project does not propose any new development the Department would like to emphasize that it supports General Plans (or Specific Plans) that foster a more efficient land use pattern that (a) supports improved mobility and reduced dependency on single-occupant vehicle trips, (b) accommodates an adequate supply of housing for all incomes, (c) reduces impacts on valuable habitat, productive farmland, and air quality, (d) increases resource use efficiency, and (e) results in safe and vibrant neighborhoods. The Department recognizes that non-motorized travel is a vital element of the transportation system and therefore, encourages communities make pedestrian and bicycle activity possible, thus expanding transportation options, and creating a streetscape that better serves a range of users – pedestrians, bicyclists, transit riders, and automobiles.
3. The Department's Traffic Operations Branch requests all traffic analysis be based on the method outlined in the latest version of the Highway Capacity Manual (HCM) when analyzing traffic impacts on State Transportation Facilities including but not limited to freeway segments,

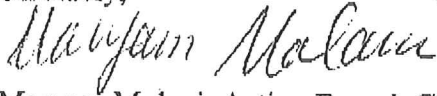
highway segments, intersections, on or off ramps (weaving, queuing, merging and diverging). The use of HCM is preferred by the Department because it is an operational analysis as opposed to the Intersection Capacity Utilization (ICU) method, which is a planning analysis. In the case of projects that have direct impacts on State Facilities, the Department recommends that the traffic impact analysis be based on HCM method. Should the project require an encroachment permit, Traffic Operations may find the Traffic Impact Study based on ICU methodology inadequate resulting in possible delay or denial of a permit by the Department. All input sheets, assumptions and volumes on State Facilities including ramps and intersection analysis should be submitted to the Department for review and approval. All environmental documents should include appropriate mitigation measures to offset any potential impacts. The traffic impact on the state transportation system should be evaluated based on the Department's Guide for the Preparation of Traffic Impact Studies which is available at:

<http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>.

4. The General Plan should acknowledge the Departments' standard of maintaining a target Level of Service (LOS) at the transition between LOS C and LOS D on State highway facilities. Any degradation of the LOS past this threshold should be mitigated to bring the facility back to the baseline/existing condition. For future projects that may impact State facilities, we recommend that early coordination be done between the Department and the City to fully address level of significance thresholds (transition between LOS C and D) and appropriate methods for analyzing impacts (LOS vs. Hours of Delay).
5. Should new development be proposed in the future, the Department has interest in working cooperatively to establish a Traffic Impact Fee (TIF) program to mitigate impacts to State Transportation Facilities on a "fair share" basis. Local development project applicants would pay their "fair share" to an established fund for future transportation improvements on the state highway system. If there is an existing TIF program, it can be amended to include mitigation for the State Highway System or a new TIF program may be considered. The Department requests the opportunity to participate in the TIF for State Highway improvements development process.
6. Future projects have the potential to significantly impact SR-73 mainline and interchanges, ramps and intersections. Impacts of development causing operating conditions to deteriorate to deficient levels of service, or impacts adding to an existing deficient level of service condition require mitigation.
7. The Department requests to participate in the establishment and implementation of "fair share" mitigation for the project impacts. The Department has an established methodology standard used to properly calculate equitable project share contribution. This can be found in Appendix B of the Department's Guide for the Preparation of Traffic Impact Studies which is available at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>.
8. For CEQA purposes, the Department does not consider the Congestion Management Plan (CMP) significance threshold of an increase in v/c more than 1% ramps or 3% for mainline appropriate. For analysis of intersections connecting to State facilities, ramps and freeway mainline, we recommend early coordination occur to discuss level of significance thresholds related to traffic and circulation.

Please continue to keep us informed of this project and any future developments, which could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,

A handwritten signature in cursive script, reading "Maryam Molavi".

Maryam Molavi, Acting Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

6. Airport Land Use Commission (October 31, 2011)

It is important to note that the City of Newport Beach submitted the proposed Housing Element Update (2008 - 2014) to the Airport Land Use Commission (ALUC) for consistency review with the Airport Environs Land Use Plan (AELUP) in accordance with Public Utilities Code Section 21676. The ALUC is scheduled to review the draft Housing Element for consistency review on November 17, 2011.



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

October 31, 2011

Jaime Murillo, Associate Planner
City of Newport Beach Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

Subject: Newport Beach Housing Element Update (2008-2014)

Dear Mr. Murillo:

Thank you for the opportunity to review the Notice of Intent to Adopt a Negative Declaration for the proposed Newport Beach Housing Element Update (2008-2014) in the context of the Airport Land Use Commission's *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)*. The proposed Newport Beach Updated Housing Element is a comprehensive statement of the City's housing policies and serves as a specific guide for implementation of these policies.

As stated in the initial study, the Housing Element Update does not include specific development projects, but instead, provides a framework for the City's anticipated future residential growth and housing demand. The initial study includes a discussion of issues that should be considered when developing projects surrounding John Wayne Airport such as height restrictions, safety issues, and noise. The initial study also states that all land uses surrounding JWA would be subject to the land uses standards established in the City's Municipal Code and the *AELUP for JWA*.

A referral by the City to the ALUC may be required for this project due to the location of the proposal within an AELUP Planning Area and due to the nature of the required City approvals (i.e. Housing Element Update) under PUC Section 21676(b). With respect to project submittals, please note that the Commission wants such referrals to be submitted to the ALUC for a determination, between the Local Agency's expected Planning Commission and City Council hearings. Since the ALUC meets on the third Thursday afternoon of each month, submittals must be received in the ALUC office by the first of the month to ensure sufficient time for review, analysis, and agendaing.

Thank you for the opportunity to comment on the proposed Housing Element Update. Please contact Lea Choum at 949.252.5123 or via email lchoum@ocair.com if you require additional information.

Sincerely,

Kari A. Rigoni
Executive Officer